In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 22, Original

STATE OF SOUTH CAROLINA, PLAINTIFF

v.

NICHOLAS DEB. KATZENBACH, ATTORNEY GENERAL OF THE UNITED STATES, DEFENDANT

MEMORANDUM FOR THE DEFENDANT

On September 29, 1965, the State of South Carolina filed with the Court a motion for leave to file a complaint invoking this Court's original jurisdiction. The complaint, which names the Attorney General of the United States as the defendant, challenges the constitutionality of the Voting Rights Act of 1965 and seeks a decree enjoining the principal provisions of the Act.

For the reasons stated in the brief of the United States in support of its motions for leave to file original complaints and for expedited consideration, filed with the Court this day in *United States* v. *Alabama, United States* v. *Mississippi,* and *United States* v. *Louisiana,* Nos. —, —, and —, Original, this Term, we believe that the Court has jurisdiction to entertain

790-874—65

this original action[1] and may appropriately exercise its jurisdiction here. Accordingly, we do not oppose Souh Carolina's motion for leave to file its complaint.

As pointed out in our brief in the other cases, note 5, pages 16–17, this Court, if it accepts jurisdiction here, might ultimately dispose of the case without reaching the merits of the constitutional issue on the ground that the question is premature because South Carolina has an adequate alternative remedy in the United States District Court for the District of Columbia by seeking exemption from the substantive requirements of the Voting Rights Act. This suggestion, however, does not affect the jurisdiction of this Court to entertain the complaint tendered by South Carolina. Nor do we imply that the propriety of such a disposition should be determined in advance of full argument.

---

[1] The original jurisdiction of this Court here, too, is predicated on Article III, Section 2, Clause 2. Federal jurisdiction is premised on the portion of Clause 1 of the same Section that extends the judicial power of the United States to "Controversies * * * between a State and Citizens of another State." Attorney General Katzenbach is a citizen of New Jersey. See *Alabama* v. *United States*, 373 U.S. 545. We construe Section 14(b) of the Voting Rights Act (which provides that actions to challenge the Act's constitutionality shall be brought in the United States District Court for the District of Columbia), like Section 12(f) (which vests jurisdiction to enforce the Act in the district courts) as not intended to deprive this Court of jurisdiction of appropriate original actions challenging the Act's constitutionality, in view of the constitutional basis of this Court's original jurisdiction. Brief, n. 1, p. 8. At all events, the Court may grant the State's motion for leave to file a complaint without now resolving the question of jurisdiction, which can properly be postponed to the time when the case is considered on the merits.

The somewhat expedited procedure which we have suggested with respect to the original actions filed by the United States against the States of Alabama, Mississippi and Louisiana is, we think, equally appropriate here. We are further advised that the State of South Carolina favors an expedited consideration of the cause.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.

OCTOBER 1965.

U.S. GOVERNMENT PRINTING OFFICE: 1965